

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0628

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 30, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause, and therefore was disqualified from receiving unemployment insurance benefits effective March 3, 2024 (decision # L0003827191). Claimant filed a timely request for hearing. On August 9, 2024, ALJ Chiller conducted a hearing at which the employer failed to appear, and on August 20, 2024, issued Order No. 24-UI-263132, affirming decision # L0003827191). On August 28, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) Royal Caribbean Cruises, Ltd. employed claimant, most recently as a travel agent, from July 7, 2014, until March 5, 2024.

(2) During all times relevant to this decision, claimant suffered from lupus and fibromyalgia.

(3) Claimant's role required her to meet specific performance metrics. In particular, claimant's performance was scored based on how long, on average, she spent on each customer phone call she took.

(4) In or around August 2023, claimant's supervisor placed her on a performance improvement plan (PIP) because claimant had been failing to meet her time-per-call metrics. Per the terms of the PIP, claimant was required to meet her metrics for three consecutive weeks in a row, or else she would be discharged. While the PIP was in effect, claimant was also required to meet with her supervisor on a weekly basis to discuss her progress. During each of those meetings, even though claimant was improving and eventually met her performance goal, the supervisor would reiterate to claimant that she

was in danger of being discharged if she did not keep her performance up. Claimant was removed from the PIP after six weeks, having satisfactorily met its terms.

(5) The call metrics of all of claimant's team members were regularly disseminated among the team for all members to view. Noticing that several of her team members had sub-standard metrics similar to what hers had been, claimant asked those other team members if they had also been placed on PIPs. They told claimant that they had not. As a result of this, and the supervisor's having regularly advised claimant that she was in danger of being discharged, claimant came to believe that the supervisor, and the manager to whom he reported, were "targeting" claimant. Transcript at 9. The supervisor and manager continued to regularly advise claimant of the danger of discharge even after claimant was removed from the PIP.

(6) In or around early October 2023, claimant filed a complaint with the employer's human resources (HR) office regarding her belief that the supervisor and manager were "targeting" her. The HR analyst reviewed the metrics of claimant and her team members, confirmed that claimant's underperforming team members were not on PIPs, and agreed that the situation was unusual. With claimant's permission, the HR analyst held a meeting with claimant, the supervisor, and the manager about the situation. The latter two denied any wrongdoing, and stated that they had only been trying to help claimant.

(7) For approximately a week after the meeting with HR, claimant continued to work, hoping that the situation would improve. However, the supervisor continued to regularly remind claimant that she was at risk of being discharged, despite her having met her performance metrics. These regular reminders of a potential discharge, and claimant's belief that the supervisor and manager were "targeting" her, led claimant to experience significant anxiety over the prospect of losing her job. This caused claimant to regularly cry, withdraw from family life, and make her feel like she was "losing [her] mind." Transcript at 18. The anxiety also caused claimant to experience debilitating flare-ups of her lupus and fibromyalgia. Claimant would have accepted a transfer to a different department with a different supervisor and manager if possible, but the HR analyst never mentioned such a possibility, so claimant never pursued it.

(8) To address the anxiety and related concerns, claimant consulted with her doctor, who diagnosed claimant with depression as well as anxiety. Claimant's doctor prescribed claimant with medication that helped alleviate some of the symptoms of anxiety and depression. The doctor also advised claimant to take time off of work. Beginning in November 2023, claimant took a medical leave of absence. At her doctor's advice, claimant sought a counselor to help address the anxiety and depression, but was unable at that time to find one who was available and accepted her insurance.

(9) Claimant's leave of absence was originally planned to last for 12 weeks. While the time off helped alleviate some of claimant's symptoms, her anxiety would return each time that claimant considered the prospect of returning to work. In late January 2024, when the initial 12-week period was about to end, claimant's doctor approved her to extend the leave through March 5, 2024. Claimant had short-term disability benefits through the employer, which paid her a portion of her salary while she was on medical leave.

(10) On March 5, 2024, as her approved leave was set to expire, claimant voluntarily quit work because she felt overwhelmed with anxiety and depression at the prospect of returning to work and being

“targeted” by her supervisor and manager again. At that time, claimant could have taken up to an additional 16 weeks of paid medical leave using her disability benefits. However, claimant did not do so because she “just didn’t feel like it was worth going through that” compared to the prospect of being unemployed and finding a new job, and felt that being unemployed would cause her less anxiety than returning to work for the employer. Transcript at 27. As of the date of the August 9, 2024, hearing, claimant had not found a counselor.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless they prove, by a preponderance of the evidence, that they had good cause for leaving work when they did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). “Good cause . . . is such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work.” OAR 471-030-0038(4) (September 22, 2020). “[T]he reason must be of such gravity that the individual has no reasonable alternative but to leave work.” OAR 471-030-0038(4). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). Claimant had lupus and fibromyalgia, which are permanent or long-term “physical or mental impairments” as defined at 29 CFR §1630.2(h). A claimant with a long-term impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such an impairment would have continued to work for their employer for an additional period of time.

Claimant voluntarily quit work due to anxiety caused by her supervisor and manager’s having regularly warned claimant that she could be discharged if her performance did not meet the employer’s required standards. The supervisor and manager continued to issue these warnings to claimant despite her having improved to the required standards, and despite the fact that she had sought intervention with HR. Furthermore, claimant believed that the supervisor and manager were unfairly “targeting” her because her other colleagues had not been subject to the same treatment, despite their similar performance metrics. The anxiety caused by this apparent “targeting,” and regular reminders of the possibility of her discharge, affected claimant both emotionally—by causing her to withdraw from family life, regularly cry, and experience related mental health symptoms—and by exacerbating her chronic physical conditions to the point of being debilitating. While claimant experienced some relief from these symptoms by taking a medical leave of absence, the symptoms tended to return when she considered the prospect of returning to the team and being again subjected to the warnings from her supervisor and manager. Therefore, claimant quit instead of returning to work when her leave of absence was scheduled to end.

Given the significant effects that claimant’s anxiety had on both her mental and physical state, claimant faced a grave situation. However, claimant failed to seek reasonable alternatives to quitting. In particular, while the record shows that claimant found some relief from medication that her doctor prescribed, claimant apparently did little else in an attempt to treat the anxiety itself. Doing so, or at least attempting to do so, would have been a reasonable alternative to quitting.

To be clear, the record does suggest that claimant was likely unfairly singled out for concerns about her performance, and it is not clear why the supervisor and manager continued reminding claimant of the possibility of her discharge once she had improved her performance. Claimant developed debilitating

anxiety as a result of this behavior. Even if this behavior was objectionable, however, it was not so inherently offensive as to cause a reasonable and prudent person, suffering from the same chronic conditions which were exacerbated by anxiety, to conclude that the only way to manage this stressor was to quit work. There is no indication in the record, for instance, that either the supervisor or the manager spoke to claimant in an aggressive or belittling tone, insulted her, used foul language, or otherwise threatened her (outside of reminding her that her continued employment was contingent upon her satisfactory performance). Thus, the anxiety-producing situation claimant faced was the prospect of being regularly reminded of an unpleasant fact of which she was already aware. It is reasonable to conclude that seeking treatment for the anxiety which these reminders caused could have helped claimant cope better and continue to work without experiencing untenable levels of distress.

The record shows that claimant did make some effort to find a counselor to help her address this issue, but was unsuccessful in finding one prior to quitting. However, the record also shows that claimant could have taken up to another 16 weeks of paid leave as of the date that she quit. *Young v. Employment Dept.*, 170 Or.App. 752, 13 P.3d 1027 (Or. App. 2000) suggests that remaining on paid medical leave while awaiting the resolution of a medical issue which otherwise prevents the individual from returning to work is a reasonable alternative to voluntarily quitting due to the medical issue; and, further, that a claimant who quits rather than remaining on paid leave in such circumstances bears the burden of proof to show that remaining on paid leave is not a reasonable alternative to quitting. *Compare with Sothras v. Employment Division*, 48 Or App 69, 616 P2d 524 (1980) (despite being on an unpaid leave of absence for more than a month claimant remained unable to return to work; the court held that “a protracted, unpaid leave of absence is not a ‘reasonable alternative’ to leaving work and being unemployed; indeed it is not an alternative at all”); *Taylor v. Employment Division*, 66 Or App 313, 674 P2d 64 (1984) (claimant had good cause to leave work after being suspended without pay for over a month, and there was no end in sight to the suspension).

Here, claimant could have presumably continued to look for a counselor who could help her manage her anxiety so that she could return to work without the debilitating effects she had been experiencing, all while remaining on paid medical leave. Claimant suggested that she felt that doing so would not be worth the effort compared to quitting and finding a new job, but did not show that she could not have continued to search for a counselor or other support for her anxiety, or that doing so would have been futile. Notably, while claimant apparently had not found a counselor as of the date of the August 2024 hearing, she did not show that at the time she quit, she either knew or had reason to know that searching diligently for a counselor over the course of an additional 16 weeks of paid medical leave would be fruitless. Therefore, continuing on paid medical leave for an additional period of time while she sought a counselor would have been a reasonable alternative to quitting. Because claimant did not do so, she failed to seek reasonable alternatives to quitting.

For the above reasons, claimant voluntarily quit work without good cause, and is disqualified from receiving unemployment insurance benefits effective March 3, 2024.

DECISION: Order No. 24-UI-263132 is affirmed.

D. Hettle and A. Steger-Bentz;
S. Serres, not participating.

DATE of Service: September 19, 2024

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the ‘search’ function to search for ‘petition for judicial review employment appeals board’. A link to the forms and information will be among the search results.

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Understanding Your Employment Appeals Board Decision

English

Attention – This decision affects your unemployment benefits. If you do not understand this decision, contact the Employment Appeals Board immediately. If you do not agree with this decision, you may file a Petition for Judicial Review with the Oregon Court of Appeals following the instructions written at the end of the decision.

Simplified Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Traditional Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Tagalog

Paalala – Nakakaapekto ang desisyong ito sa iyong mga benepisyo sa pagkawala ng trabaho. Kung hindi mo naiintindihan ang desisyong ito, makipag-ugnayan kaagad sa Lupon ng mga Apela sa Trabaho (Employment Appeals Board). Kung hindi ka sumasang-ayon sa desisyong ito, maaari kang maghain ng isang Petisyon sa Pagsusuri ng Hukuman (Petition for Judicial Review) sa Hukuman sa Paghahabol (Court of Appeals) ng Oregon na sinusunod ang mga tagubilin na nakasulat sa dulo ng desisyon.

Vietnamese

Chú ý - Quyết định này ảnh hưởng đến trợ cấp thất nghiệp của quý vị. Nếu quý vị không hiểu quyết định này, hãy liên lạc với Ban Kháng Cáo Việc Làm ngay lập tức. Nếu quý vị không đồng ý với quyết định này, quý vị có thể nộp Đơn Xin Tái Xét Tư Pháp với Tòa Kháng Cáo Oregon theo các hướng dẫn được viết ra ở cuối quyết định này.

Spanish

Atención – Esta decisión afecta sus beneficios de desempleo. Si no entiende esta decisión, comuníquese inmediatamente con la Junta de Apelaciones de Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación de Revisión Judicial ante el Tribunal de Apelaciones de Oregon siguiendo las instrucciones escritas al final de la decisión.

Russian

Внимание – Данное решение влияет на ваше пособие по безработице. Если решение Вам непонятно – немедленно обратитесь в Апелляционный Комитет по Трудоустройству. Если Вы не согласны с принятым решением, вы можете подать Ходатайство о Пересмотре Судебного Решения в Апелляционный Суд штата Орегон, следуя инструкциям, описанным в конце решения.

Khmer

ចំណុចសំខាន់ – សេចក្តីសម្រេចនេះមានផលប៉ះពាល់ដល់អត្ថប្រយោជន៍គ្មានការងារធ្វើរបស់លោកអ្នក។ ប្រសិនបើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

Laotian

ເອົາໃຈໃສ່ – ຄໍາຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄໍາຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນໍາຄໍາຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄໍາຮ້ອງຂໍການທົບທວນຄໍາຕັດສິນນໍາສານອຸທອນລັດ Oregon ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فوراً، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الاستئناف بأوريغون و ذلك بإتباع الإرشادات المدرجة أسفل القرار.

Farsi

توجه - این حکم بر مزایای بیکاری شما تاثیر می گذارد. اگر با این تصمیم موافق نیستید، بلافاصله با هیأت فرجام خواهی استخدام تماس بگیرید. اگر از این حکم رضایت ندارید، می‌توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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